

## CONFIDENTIAL INVESTIGATION SUMMARY MEMO

To: Justin St. James, City Attorney

Fr: Anita D. Tinney, Esq, Contract Investigator

Date: August 23, 2021

Subject: **Gene Richards Allegation of Misuse of City Resources for Personal Use and Mistreatment of Airport Employees: Investigative Findings – Executive Summary**

**Part 1: Overview:** On July 7, 2021, the Investigator was contacted by Kerin Durfee, Director of Human Resources for the City of Burlington. In her communications, Ms. Durfee requested an investigation into two key allegations against Mr. Gene Richards, Department Head for the City of Burlington Airport. Quickly after joint discussions between the City and the investigator, they agreed that those two allegations included misuse of city resources for personal use and mistreatment of airport employees. The Investigator agreed to conduct the investigation, with the specific scope including:

- 1) **Misuse of City resources for personal use including:** as evidenced by
  - a) removal of top soil from the air field and taking it off site
  - b) Kirby Cottages being used by airport personnel and not flight crew
  - c) using City gas and car wash from the QTA Facility for personal use (making swipe cards to use QTA)
  - e) conflicts of interest in hiring
  - f) manipulating the bid process for preferred contractors
- 2) **Mis-treatment of Airport Employees**
  - a) “I am the Airport head and can do what I want” comments and attitude toward employees
  - b) negative feedback in front of others
  - c) calling employees derogatory names
  - d) bullying, humiliating and screaming at employees in front of others.

### **Part 2: Investigative Process:**

#### **Interviews:**

During the course of the investigation, the Investigator interviewed eleven witnesses, including current and former members of Mr. Richards direct staff. In addition to the interview meetings, multiple employees submitted a written statement and/or met with Human Resources Director, Kerin Durfee regarding their concerns and/or allegations about Mr. Richards prior to the start of the investigation.

### Documents Reviewed

During the course of the investigation, the Investigator reviewed more than 1500 pages of documentation, including the City's Policies, Airport RFPs for the past two years, Lease Agreements for the QTA Facility, Multiple City Airport Soil Permits, Hiring Documents for Airport Personnel, documents related to the lease and sale of the Kirby Cottages, performance and discipline documents for Airport personnel.

### **Part 3: Investigative Findings 1: Misuse of City Resources for Personal Use: The allegation is unsubstantiated.**

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The Investigator and City agreed that the allegations to investigate were those in the City's Personnel Handbook, Section 8.2.d, that provides that the "*damage or misuse of City property*" is grounds for immediate discipline, including dismissal.

Mr. Richards is the current Director of Aviation and according to City Records, has performed admirably and with good outcomes for the City for several years, culminating with this most recent recommendation for re-appointment in April, 2021. Undoubtedly, Mr. Richards has been granted broad authority to run Airport Operations, as appointed. Each of the allegations has been investigated in light of determining whether Mr. Richards has exceeded that authority in the exercise of his duties.

#### **a) There is insufficient evidence to support that Mr. Richards' use of the QTA Facility to gas and wash his personal vehicle is a violation of City policy.**

The Quick Turnaround Facility (QTA) is a new construction project featuring a gas station and car wash facility that was completed for car rental concession, but turnover of which was delayed due to COVID-19. According to Mr. Richards and multiple parties, while the facility is completed, the lease agreements for the QTA facility with the rental companies has expired and is currently in progress of re-negotiation. Prior to the full occupation of the QTA facility by the rental car companies, the BTV airport has assumed financial responsibility for its upkeep and maintenance, which includes purchasing more than 6000 gallons of fuel for the gas station in anticipation of its use.

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The Investigator has been unable to uncover any specific regulation that would prohibit the use of the QTA facility gas and car wash by the City, in fact, the City has reserved such a use in the prior lease agreements with the Rental companies. As such, the question is not specifically about the prohibited use of the facility by the City, but whether or not Mr. Richards has misused the facility for personal gain. Multiple parties have corroborated that Mr. Richards has been observed using the facility to wash and fuel his personal vehicle on multiple occasions. Indeed, Mr. Richards does not dispute this behavior. He explains that he uses his personal vehicle for City Business on a very frequent basis, a fact which was corroborated by multiple witnesses and as such, argues is not using City property for personal gain. Additionally, he explained that since the QTA facility is not currently in use, he authorized any of the City gas (not diesel) vehicles to use the facility to avoid the gas "going bad." There is certainly a perception by multiple parties that this use is improper and appears to be misuse of City property. Notwithstanding the perception, the Investigator finds that although not specifically authorized, the decision made by Mr. Richards was also not specifically prohibited. While the Investigator believes it was a lapse of judgment and violation of practice not to get explicit approvals for a program he utilized for personal reimbursement, there is no specific City regulation that requires him to do so. Further, since Mr. Richards has not been utilizing the reimbursement provisions to which he is entitled for use of his personal vehicle on City business, it is impossible for the Investigator to determine to what extent he is using the gasoline in his personal vehicle for City or personal use. Therefore, while the use has created a perception of impropriety, a policy violation is not evident.

**b) The removal of the City's resource (topsoil) from the airport property offsite and the receipt of soil from another project being deposited at the airport was a violation of City permits, however, rectified and reported. There is no evidence that Mr. Richards' decision to permit the removal was a misuse of City resources for personal use.**

It was alleged that in May, 2020, the City was informed by the Environmental Inspector that topsoil was being removed from the airport and that other soil had been received to the airport property not generated through airport projects. According to witnesses, the removal and receipt of soil is managed through multiple permit approvals, and as such, the intermixing of soils is a regulated process. Mr. Richards does not dispute that he allowed one of the City's primary contractors who does a lot of work at the airport, to remove some topsoil temporarily, with the understanding that it would be replaced in a few weeks. Ultimately, the decision was reversed, the practice was stopped and the appropriate Agencies were notified of the permit error. Also, it is not alleged, and there is no evidence to support, that Mr. Richards removed the topsoil for his personal, private or financial gain.

**c) There is insufficient evidence to support that Mr. Richards' hiring of a relative**

**violated the City's Conflict of Interest policy.**

Multiple witnesses alleged that Mr. Richards has engaged in a conflict of interest in hiring the brother of Mr. Richards' son's wife. According to Mr. Richards and the multiple of the witnesses interviewed, at the time of hire, his sister was not yet married to Mr. Richards son. The City's Personnel Handbook, Section 12.4 ANTI-NEPOTISM/CONFLICT OF INTEREST provides that, *"no relatives shall be hired or transferred under the following conditions: a. When one close relative would supervise or evaluate the other: or b. When one close relative would supervise or evaluate the immediate supervisor of the other. Unless advance written approval is obtained by the Human Resources Director, no close relative will be employed within the same division of a department."* However, "close relative" is specifically defined by the policy to include: *"Close relative is defined as, parent, grandparent, spouse, party to a civil union, domestic partner, child, sibling, grandchild, aunt, uncle, niece, nephew, parent-in-law, brother/sister-in-law, stepparent, stepchild, and any other person closely related or living with the employee."*

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As identified, the specific relationship in this instance, daughter-in-law's brother, is not a close relative, therefore, his hiring is not specifically prohibited by the policy. It would appear that the determination of "and any other person closely related" is then left to interpretation of the Department Head and Human Resources. While this decision gave the appearance of a conflict of interest, the Personnel policy does not regulate decisions that give the appearance of conflict, only those that create an actual one.

**d) There is no evidence to support the allegation that Mr. Richards manipulates the bid process to his preferred contractors.**

A few of those interviewed indicated there was an appearance that Mr. Richards has a preferred contractor, however, acknowledged this contractor was a good contractor, providing high quality work at reasonable prices. There was no specific contract in which the witnesses were able to identify that Mr. Richards worked outside of the established bid process or manipulated the bid process to guarantee selection of a particular contractor, as such, this allegation appears to have been conjecture. Mr. Richards denies that he has engaged in any manipulation of the bid process. He agrees that it may appear that there is a preferred contractor because there are only a few contractors who have the experience and capability to do the work and that they have a history of performing high quality work for the airport. However, he denies they are given preferential treatment in the bid process.

Nonetheless, the Investigator requested and reviewed all of the RFPs awarded by the City airport in the past two years and was unable to identify any project that had an appearance of impropriety. Of course, a cursory review, without a specific allegation is unlikely to uncover a

process anomaly. Further, the Investigator interviewed one of the City Attorneys, who is regularly engaged in the contract process for the airport, who explained that there are multiple controls and/or approvals in the process to ensure City and FAA regulations are followed consistent with the City's Purchasing Policy. As such, not only was the Investigator unable to establish any actual manipulation of the process, but the Investigator was also unable to identify any obvious places in the process where manipulation could occur.

**e) A City employee was permitted to reside in the Kirby cottages, which was not in contravention to the City Council and Board of Finance approval received.**

Multiple witnesses explained that as part of the FAA noise program, the City purchases houses in the noisy zone, relocates the home owner and demolishes the houses. The witnesses confirmed that the City has purchased more than 200 of these homes, seven of which were condo units (referred to as the Kirby Cottages), purchased in 2017. However, instead of demolishing them, the City held on to them in the hopes to work with the FAA to sell them with an easement or to find a solution to relocate them. In the interim, the City pursued leasing the houses at no cost, to minimize the damage of the properties being vacant and vandalized.

5 According to the witnesses, the rental properties were intended to be "crew quarters," meaning airline employees. However, the witnesses also confirmed that it was the City's intention that airport employees (including, airline, restaurant, crew) in need of housing would be a win-win situation. A key witness recalled "going back and forth" with the FAA on this point, but was unable to locate a document from the FAA on the definition. However, this question has arisen because a former Director of Operations and a City employee, was permitted to rent one of the cottages for approximately six months (from October, 2019 to March, 2020), a fact that is not in dispute.

Thereby, the question at issue is whether Mr. Richards permitted a City (not crew) employee to lease the premises in contravention to the City Council Resolution and/or FAA approval. The Investigator was unable to uncover in any of the documents any written guidance from the FAA that only required "crew" members to rent the cottages. However, the Burlington City Council Resolution from 2017, specifically articulates that *"the Airport has been given by the FAA to lease each of these buildings on a short-term basis, to Airport Crew Members pending an evaluation of whether and how said homes could be moved and used in another location."*

The City Council Resolution, dated January, 2017, does not specifically prohibit the lease to other City employees in this document, however in the February, 2017 memo to the Board of Finance and the City Council, BTV requested permission to enter into lease agreements for the Cottages, which they ultimately received. However, specific in the non-binding memo



accompanying the Resolution was the detail that the lease agreements would only be authorized as "Crew Quarters," which was specifically defined in the request as related to "*Airport Employees only, (not City of Burlington), i.e. Airline Employees.*" This added to the confusion. Notwithstanding the fact that renting to the City employee was probably a good decision for the City, it appears to the Investigator that permitting the City employee to lease one of the cottages for six months was not in contravention to the approval BTV received via the Resolution by the Board of Finance and City Council back in 2017. Ultimately, the cottages were sold in August, 2020 and there are no longer any renters.

### **Conclusion of Allegation 1: Misuse of City Resources for Personal Use**

The Investigator was unable to substantiate any misuse of City resources for personal use by Mr. Richards in any of these allegations made within the scope of the investigation.

### **Part 3: Investigative Findings 2: Mr. Richards has violated the City's conduct policy with his behavior toward staff.**

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The City's Personnel Policy Handbook, Section 8, Personal Conduct, Section 8.2 BEHAVIOR OF EMPLOYEES provides that "*verbal, written and/or physical conduct which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment*" is a violation of the policy. Corroborated by multiple witnesses, Mr. Richards regularly engages in the following behavior that employees find humiliating and offensive:

- yelling and screaming at employees, especially that "they don't know what they are doing"
- regularly using profanity or other degrading terms when addressing employees
- physically intimidating behavior (banging on tables to make a point)
- humiliating employees in front of others when he disagrees
- making sure in his words and actions to let you know that you are "disposable" and he is the "big dog"
- calling employees "useless" and "ungrateful" to their face
- saying "I run the goddamn airport and what I says goes."

Mr. Richards explained that while he can be intense, it was not his intention to mistreat any employee. He admits to occasional use of the "F-bomb," but claims that he uses it toward himself and not others. He states that he works very hard and tries to create an environment that is respectful to all employees, and he is embarrassed to learn that some employees perceive his behavior to be disrespectful. The Investigator finds Mr. Richards' denial to not be credible. There

was widespread corroboration of the alleged behavior. Every witness confirmed at least some element of these problematic allegations. Regardless of his intent (purpose), the policy considers both the “purpose and effect” of creating an “intimidating and offensive” working environment. The alleged behavior has certainly had the effect of intimidating and offending employees, so much so that multiple employees left employment or are considering leaving employment with the City because of it.